

FEB 11 2011

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINAU.S. DISTRICT COURT
WESTERN DISTRICT OF NC

MISC. # 3:11mc9

IN RE: STATE OF FLORIDA/BROWARD COUNTY)
SUBPOENA FOR PROBATION OFFICER)
JANIE PROPST)
_____)

ORDER

THIS MATTER is before the Court on the *ex parte* oral request of the Chief United States Probation Officer for the Western District of North Carolina, regarding the following: 1) a subpoena to appear and testify issued to United States Probation Officer Janie Propst and issued by the Circuit Court of the Seventeenth Judicial Circuit, Broward County Florida, dated January 28, 2011, and issued by Assistant State Attorney Jason Seidman, directing said probation officer to appear and testify on February 14 through 25, 2011, in that case in said court entitled State of North Florida v. Roberto Lezama, Court Case Number 10017935CF10A (hereinafter the Lezama Case) a copy of which is attached hereto marked as Exhibit "A" (which subpoena is hereinafter referred to as "the Subpoena"), and 2) that "Request" dated January 28, 2011, and filed with the Broward County Clerk of Court on January 28, 2011, in the Lezama Case, requesting the appearance and testimony of United States Probation Officer Propst.

The Chief Probation Officer of the Western District of North Carolina is designated pursuant to The Guide to Judiciary Policy Ch. 8 §840, which is authorized pursuant to 31 U.S.C. §1105(b), as the Determining Officer to decide whether any request for testimony or information directed to any employee of the Probation Office of the Western District of North Carolina may be enforced. Guide to Judiciary Policy Ch.8 §850(a).

"Federal judicial personnel (including Probation Officer Propst) may not provide testimony or produce records in legal proceedings except as authorized" by the Judiciary Policy Regulations. Guide to Judiciary Policy Ch.8 §820(a)

The Subpoena and the Circuit Court Request each constitute a request within the meaning of the Guide to Judiciary Policy Ch.8 §810.30(d).

The request for testimony for production of records shall set forth, or shall be accompanied by an affidavit setting forth, a written statement by the party seeking the testimony or production of records, or by counsel for the party, containing an explanation of the nature of the testimony or records sought, the relevance of the testimony or records sought to the legal proceedings, and the reasons why the testimony or records sought, or the information contained therein, are not readily available from other sources or by other means. Guide to Judiciary Policy Ch.8 §830(a).

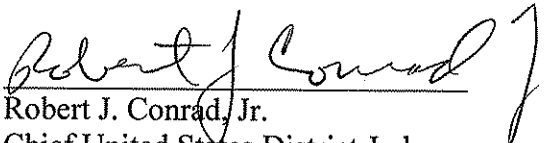
Such justification and affidavit shall be provided to the judicial personnel (here Probation Officer Propst) at least fifteen working days in advance of the time by which the information is sought. Guide to Judiciary Policy Ch.8 §830(b). Neither the Subpoena nor the Circuit Court Request contained such affidavit or comparable information, and the Circuit Court Request was not provided within the requisite period.

In addition, the Determining Officer, considering the factors set out in Guide to Judiciary Policy Ch.8 §850(a), has determined that Probation Officer Propst may not testify as requested by the Subpoena, and that any requested records sought by the Circuit Court Request may not be produced.

The Determining Officer has requested an order of this Court pursuant to the Standing Order of this Court entitled In Re: Order Delegating Authority to Disclose Information Acquired by the U.S. Probation Office, 3:04mc113, dated August 9, 2004, for the purpose of enforcing the determination made by the Determining Officer.

IT IS THEREFORE ORDERED that the request of the Chief United States Probation Officer for the Western District of North Carolina is **GRANTED**, and United States Probation Officer Janie Propst shall not give any pretrial, presentence or supervision information or testimony, and shall not produce or disclose any probation record relating to Roberto Lezama, unless authorized by said Chief Probation Officer, and by further Order of this Court.

IT IS SO ORDERED.


Robert J. Conrad, Jr.
Chief United States District Judge